

ESTTA Tracking number: **ESTTA108737**

Filing date: **11/09/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92046101
Party	Defendant BUD K WORLDWIDE, INC. BUD K WORLDWIDE, INC. P.O. Box 565 Moultrie, GA 31776
Correspondence Address	Bud K Worldwide, Inc. P.O. Box 565 Moultrie, GA 31776
Submission	Motion to Reopen
Filer's Name	Carrie L. Kiedrowski
Filer's e-mail	clkiedrowski@jonesday.com, wsmith@jonesday.com
Signature	/Carrie L. Kiedrowski/
Date	11/09/2006
Attachments	Bud K's Response to Notice of Default.pdf ( 21 pages )(1071338 bytes ) Bud K's Answer to Petition for Cancellation.pdf ( 4 pages )(166408 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2908062  
For the Mark BAD TO THE BONE  
Filed on December 8, 2003

DESTROYERS, INC.

Petitioner,

v.

BUD K WORLDWIDE, INC.

Registrant.

Cancellation No. 92046101

**RESPONSE TO NOTICE OF DEFAULT**

**MOTION TO SET ASIDE NOTICE OF DEFAULT  
AND ACCEPT LATE-FILED ANSWER**


Pursuant to Trademark Rule of Practice Rule 312.02 and Federal Rule of Civil Procedure 55(c), Registrant, Bud K Worldwide, Inc. ("Bud K"), by and through its counsel, hereby moves the Trademark Trial and Appeal Board for an order setting aside the Notice of Default, dated October 10, 2006. Good cause exists for this Motion and it is not filed for purposes of delay. Moreover, Bud K is filing this Response within the time prescribed by the Board's Order, dated October 10, 2006.

The grounds for this Motion are set forth more fully in the memorandum submitted contemporaneously herewith.

WHEREFORE, Bud K respectfully requests entry of an order setting aside the Notice of Default issued against Registrant and that its Answer be accepted.

Dated this 9<sup>th</sup> day of November, 2006

Respectfully submitted,

By: 

William B.B. Smith  
Carrie L. Kiedrowski  
Jones Day  
1420 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3053  
Telephone: (404) 521-3939  
Facsimile: (404) 581-8330  
wsmith@jonesday.com  
clkiedrowski@jonesday.com

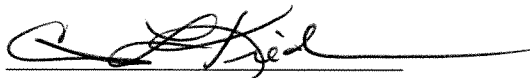
Attorneys for Registrant  
Bud K Worldwide, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document entitled **Motion to Set Aside Notice of Default and Accept Late-Filed Answer** has been served on Petitioner:

Michael A. Painter  
Isaacman, Kaufman & Painter, P.C.  
8484 Wilshire Blvd., Suite 850  
Beverly Hills, California 90211-3222

by mailing the same via United States mail, postage prepaid, on this 9<sup>th</sup> day of November, 2006.



Attorney for Registrant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2908062  
For the Mark BAD TO THE BONE  
Filed on December 8, 2003

DESTROYERS, INC.

Petitioner,

v.

BUD K WORLDWIDE, INC.

Registrant.

Cancellation No. 92046101

**MEMORANDUM IN SUPPORT OF MOTION TO SET ASIDE  
NOTICE OF DEFAULT AND ACCEPT LATE-FILED ANSWER**

**I. INTRODUCTION**

In accordance with Trademark Rule of Practice Rule 312.02 and Federal Rule of Civil Procedure 55(c), Registrant Bud K Worldwide, Inc. ("Bud K" or "Registrant") states that good cause exists for the Board to set aside the Notice of Default and to accept its late-filed Answer. The TTAB instituted the above-captioned Cancellation Proceeding on July 31, 2006 (the "Cancellation Action"). As a result of address inaccuracies, Bud K did not learn about the existence of the Cancellation Action until October 26, 2006. Consequently, Bud K's failure to file a timely answer was inadvertent. Further, Bud K asserts that setting aside the Notice of Default will not substantially prejudice Petitioner and that its contemporaneous submission of an answer shows a meritorious defense to Petitioner's allegations.

**II. STATEMENT OF FACTS**

## **II. STATEMENT OF FACTS**

Trademark Registration No. 2908062 for the mark "BAD TO THE BONE" issued on December 7, 2004 in the name of owner Bud K Worldwide, Inc. According to the USPTO's official website, [www.uspto.gov](http://www.uspto.gov), Trademark Trial and Appeal Board Inquiry System ("TTABVUE"), on July 21, 2006, Petitioner, Destroyers, Inc. ("Destroyers" or "Petitioner") filed a Petition to Cancel Registration No. 2908062 (a true and correct copy of the TTABVUE for Cancellation No. 92046101 dated November 8, 2006 is attached hereto as Exhibit A). In its Petition to Cancel, Petitioner did not provide the necessary registrant contact information. Specifically, Petitioner failed to include the address of the current owner of the registration (a true and correct copy of the Petition to Cancel is attached hereto as Exhibit B).

Thereafter, the TTABVUE shows that on July 31, 2006, the TTAB mailed a copy of the Petition along with the notice and trial dates ("Notification Letter") to Registrant at Bud K Worldwide, Inc., P.O. Box 565, Moultrie, GA 31776 (a true and correct copy of the Notification Letter dated July 31, 2006 is attached hereto as Exhibit C). The Notification Letter stated that the answer was due forty days after the date of mailing, on September 9, 2006. See Exhibit C. On October 10, 2006, the TTAB issued a Notice of Default based on Bud K's failure to answer and allowed Bud K "thirty days from the mailing date of th[e] order to show cause why judgment by default should not be entered against respondent in accordance with Fed. R. Civ. P. 55(b)" (a true and correct copy of the Notice of Default dated October 10, 2006 is attached hereto as Exhibit D).

Bud K did not file an answer by September 9, 2006 because it was unaware of the existence of the Cancellation Action. See Supporting Declaration of Rodney Hunter, ("Hunter Decl."), ¶3, attached hereto as Exhibit E. Bud K did not learn of the Cancellation Action until October 26, 2006 when it received a copy of the October 10, 2006 Notice of Default via regular

mail that had been re-routed to one of its correct addresses through the United States Post Office. Id. at ¶4.

Bud K asserts that had it been aware of the Cancellation Action, a timely answer would have been filed. Accordingly, Bud K moves the Board to set aside the Notice of Default and to request acceptance of Bud K's late-filed Answer.

### **III. ARGUMENT**

Trademark Rule 312.02 provides that the Board will set aside a notice of default for failure to file an answer upon a satisfactory showing of "good cause." See also Federal Rule of Civil Procedure 55(c); Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc., 21 U.S.P.Q.2d (BNA) 1556, at \*2. Good cause is "usually found when the defendant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action." See Trademark Rule 312.02; Fred Hayman, 21 U.S.P.Q.2d at \*3. When considering these factors, the Board must keep in mind that the law favors deciding cases on their merits. See Trademark Rule 312.02; see also CTRL Systems Inc. v. Ultraphonics of North America Inc., 52 U.S.P.Q.2d (BNA) 1300, 1302 (TTAB 1999). Similarly, "the Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant." See Trademark Rule 312.02; see also Thrifty Corp. v. Bomax Enterprises, 228 U.S.P.Q. (BNA) 62, 63 (TTAB 1985).

#### **A. No Willful Conduct Or Gross Neglect**

Good cause exists for this Motion. Here, the failure to answer was neither willful nor the result of gross neglect. Specifically, Bud K did not receive a copy of the Petition to Cancel or Notification Letter by the Board and was thus unaware of the existence of the

Cancellation Action. See Hunter Decl. ¶3. In fact, Bud K did not have any knowledge of this Cancellation Action until October 26, 2006 – over a month after an answer was due. Id. at ¶4. On October 26, 2006, Bud K received a copy of the October 10, 2006 Notice of Default that had been re-routed by the United States Post Office from an invalid P.O. Box address to one of Bud K's correct addresses. Id. at ¶4. Bud K had not received any prior communications concerning the Cancellation Action, including the Petition to Cancel or July 31, 2006 Notification Letter. Id. at ¶4. Upon learning of the Cancellation Action on October 26, 2006, Bud K immediately notified its outside counsel, Jones Day, and requested assistance with responding to the Notice of Default. Id. at ¶5.

Bud K believes that its failure to receive notice from the Board is based on several circumstances. First, the TTAB instructs the petitioner to provide the necessary name and address of the current registration owner “to the best of Petitioner’s knowledge” so that “the Board can notify that party of the filing of the Petition.” See Trademark Rule 309.02(a). Here, Destroyers’ seven paragraph Petition to Cancel was devoid of any reference to the address of the current owner, even though Petitioner is supposed to provide “whatever information” it has concerning the registrant. Id.; See Exhibit B. Although no special investigation is required, Bud K contends that a brief Internet search should have identified a correct address to include in the Petition to Cancel.

Additionally, the mailing address listed on the July 31, 2006 Notification Letter contains a P.O. Box number that is not a valid address used by Bud K. See Hunter Decl. ¶6. Specifically, the address listed was Bud K Worldwide, Inc., P.O. Box 565, Moultrie, GA 31776. See Exhibit C. Instead, the correct addresses for Bud K’s principal place of business are 475 U.S. Highway 319 South, Moultrie, GA 31768 or, as specified on its website and in its catalogs, Bud K Worldwide, Inc., P.O. Box 2768, Moultrie, GA 31776. See Hunter Decl. ¶7.



As a result of these address inaccuracies, Bud K was not aware of the institution of the Cancellation Action against its Registration No. 2908062 until October 26, 2006. Consequently, Bud K's failure to file a timely answer was not intentional, willful or the result of gross neglect. As further proof and in good faith, Bud K has diligently prepared and is submitting an answer with this Motion. Compare DeLorme Publ'g Co. v. Eartha's Inc., 60 U.S.P.Q.2d (BNA) 1222, 1224 (TTAB 2000) (willful conduct shown where applicant was aware of the complaint and intended not to answer for six months). Here, Bud K fully intends to defend its registration rights in this Cancellation Action.

**B. No Substantial Prejudice To Petitioner**

In addition to a lack of willful conduct or gross neglect, Bud K believes that setting aside the October 10, 2006 Notice of Default will not substantially prejudice Petitioner. This Motion is being filed within the Board's prescribed thirty day deadline as set forth in its Notice of Default. Moreover, in accordance with Trademark Rule 312.01, Bud K is submitting its Answer with this Motion in an attempt to prevent further delays in the progression of this case. Bud K also contends that the inadvertent two month delay in answering is not such a significant passage of time such that witnesses and evidence have become unavailable. See DeLorme Publ'g, 60 U.S.P.Q.2d at 1223-1224 (finding no substantial prejudice based on six month delay in answering). Likewise, in anticipation of a possible claim that preparing a response to Bud K's Motion is in itself prejudicial, the Board has previously ruled that litigation expenses are reasonably expected and non-prejudicial. See Paolo's Associates Ltd. P'ship v. Paolo Bodo, 21 U.S.P.Q.2d (BNA) 1899, at \*14 (Commr. Pat. 1990). Thus, Bud K's unintentional delay in filing an answer should not cause substantial prejudice to Petitioner.

**C. Registrant Has A Meritorious Defense**


Finally, as evidenced by the Answer submitted contemporaneously herewith, Bud K contends that it has a meritorious defense to this Cancellation Action. The Rules provide that all that is required is a "plausible" response to the allegations in the Petition to Cancel, and not an evaluation of the merits of the case. See Trademark Rule 312.02; see also DeLorme Publ'g, 60 U.S.P.Q.2d at 1224. As the owner of a United States registration for a mark that has been used in commerce since October 2001, Bud K's Answer should qualify as a meritorious defense. See Fred Hayman, 21 U.S.P.Q.2d at \*3 (TTAB 1991) (submission of a non-frivolous answer shows meritorious defense).

**IV. CONCLUSION**

For all the foregoing reasons, Bud K respectfully requests that the Board set aside the October 10, 2006 Notice of Default and accept its late-filed Answer.

Dated this 9<sup>th</sup> day of November, 2006

Respectfully submitted,

By: 

William B.B. Smith  
Carrie L. Kiedrowski  
Jones Day  
1420 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3053  
Telephone: (404) 521-3939  
Facsimile: (404) 581-8330  
wsmith@jonesday.com;  
clkiedrowski@jonesday.com

Attorneys for Registrant  
Bud K Worldwide, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document entitled **Memorandum In Support of Motion to Set Aside Notice of Default and Accept Late-Filed Answer** has been served on Petitioner:

Michael A. Painter  
Isaacman, Kaufman & Painter, P.C.  
8484 Wilshire Blvd., Suite 850  
Beverly Hills, California 90211-3222

by mailing the same via United States mail, postage prepaid, on this 9<sup>th</sup> day of November, 2006.



Attorney for Registrant



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

## TTABVUE. Trademark Trial and Appeal Board Inquiry System

## Cancellation

**Number:** 92046101**Filing Date:** 07/21/2006**Status:** Pending**Status Date:** 07/31/2006**Interlocutory Attorney:** CINDY B GREENBAUM**Defendant****Name:** BUD K WORLDWIDE, INC.**Correspondence:** Bud K Worldwide, Inc.  
P.O. Box 565  
Moultrie, GA 31776**Serial #:** 76564120**Registration #:** 2908062**Application Status:** Cancellation Pending**Mark:** BAD TO THE BONE**Plaintiff****Name:** DESTROYERS, INC.**Correspondence:** MICHAEL A. PAINTER  
ISAACMAN, KAUFMAN & PAINTER, P.C.  
8484 WILSHIRE BLVD., SUITE 850  
BEVERLY HILLS, CA 90211-3222**Serial #:** 76648243**Application Status:** Non-Final Action - Mailed**Mark:** BAD TO THE BONE**Prosecution History**

#	Date	History Text	Due Date
4	10/10/2006	<u>NOTICE OF DEFAULT</u>	
3	07/31/2006	<u>PENDING, INSTITUTED</u>	
2	07/31/2006	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	09/09/2006
1	07/21/2006	<u>FILED AND FEE</u>	

Results as of 11/08/2006 12:34 PM

**[Back to search results](#)****Search:** [HOME](#) | [INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)

TTAB

Exhibit B  
Cancellation No. 92046101  
In the Matter of Registration No. 2908062  
For the Mark BAD TO THE BONE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DESTROYERS, INC., a California  
corporation )

Petitioner, )

v. )

BUD K WORLDWIDE, INC., a  
Georgia corporation, )

Registrant. )

Cancellation No. \_\_\_\_\_

Reg. No. 2,908,062

Dated: December 7, 2004

76564120

CERTIFICATE OF MAILING

The undersigned declares under the penalty of perjury the within PETITION FOR CANCELLATION (IN TRIPLICATE) AND FILING FEE were forwarded to BOX FEE - TTAB, Commissioner of Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, by depositing same with the United States Postal Service as first class mail, postage prepaid, this 19th day of July, 2006.

07/24/2006 GTHDRAS2 00000060 2908062

01 FC:6401

900.00 DP

  
SHERYL R. CONAWAY

PETITION FOR CANCELLATION

BOX FEE - TTAB  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Sir:

Petitioner, DESTROYERS, INC., is a California corporation and has its principal place of business in Beverly Hills, California. Petitioner believes that it is or will be damaged by

- 1 -

MAP-TTAB-5351

07-21-2006

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Registration No. 2,908,062 hereby petitions to cancel same. The Registrant's application was filed on December 8, 2003 for the mark BAD TO THE BONE in International Class 8 for folding knives; International Class 25 for tee shirts; and International Class 26 for belt buckles not of precious metal; the Certificate of Registration claiming first use in commerce in October, 2001.

The grounds for cancellation are as follows:

1. The Petitioner, DESTROYERS, INC., is a California corporation having its principal place in business at Beverly Hills, California. The Petitioner is engaged in the business of rendering entertainment services by a musical and vocal group.

2. That in or about 1983, Petitioner adopted the service mark BAD TO THE BONE to designate clothing, namely, T-shirts, tank tops, jackets and hats. The mark was used in interstate commerce in 1983, said trademark having been continuously used in interstate commerce since its adoption.

3. On October 11, 2005, Petitioner filed an application for registration of the BAD TO THE BONE trademark to designate clothing, namely, T-shirts, tank tops, jackets and hats, said application being designated as Serial No. 76/648,243.

4. On April 19, 2006, an Office Action was issued refusing registration of the mark BAD TO THE BONE to designate clothing, namely, T-shirts, tank tops, jackets and hats on the basis Petitioner's trademark so resembled the mark in Registra-

tion No. 2,908,062 as to be likely to cause confusion, to cause mistake or to deceive.

5. Based upon Petitioner's continuous use of the trademark BAD TO THE BONE to designate clothing, namely, T-shirts, tank tops, jackets and hats in interstate commerce commencing in 1983 prior to the filing date alleged in Registration No. 2,908,062, Petitioner has priority of use of the BAD TO THE BONE trademark.

6. Use of the mark BAD TO THE BONE by Registrant is likely to dilute the distinctive quality of Petitioner's BAD TO THE BONE trademark with the result that continued registration of the mark will lessen the impact of Petitioner's BAD TO THE BONE trademark through tarnishment and blurring the goods identified by Petitioner's mark.

7. Petitioner is likely to be damaged by continuation of said registration in that a likelihood of confusion exists between Petitioner's mark and that of the Registrant. For a substantial period of time, Petitioner has continuously used the mark for the designated goods and Petitioner's continued and legal use of said mark will be impaired by the continued registration of said mark of Registrant.

**WHEREFORE**, Petitioner respectfully prays that the Petition for Cancellation be sustained and the registration obtained by Registrant be cancelled.

The requisite filing fee is enclosed herewith.

Please address all correspondence to MICHAEL A.

PAINTER, ESQ. of ISAACMAN, KAUFMAN & PAINTER, A Professional Corporation, with offices at 8484 Wilshire Boulevard, Suite 850, Beverly Hills, California 90211 (323) 782-7700.

Respectfully submitted,

ISAACMAN, KAUFMAN & PAINTER  
A Professional Corporation

By:



Michael A. Painter

MAP:src

Dated: July 17, 2006

8484 Wilshire Boulevard, Suite 850

Beverly Hills, California 90211

(323) 782-7700



ISAACMAN, KAUFMAN & PAINTER  
A PROFESSIONAL CORPORATION  
8484 WILSHIRE BOULEVARD, SUITE 850  
BEVERLY HILLS, CA 90211  
(323) 782-7700

CITY NATIONAL BANK  
ENTERTAINMENT DIVISION  
400 N ROXBURY DR. 310-553-4262  
BEVERLY HILLS, CA 90210  
16-1606/1220

1606

1606

07/18/06

PAY TO THE  
ORDER OF

Commissioner for Trademarks

\$\*900.00\*

\*\*NINE HUNDRED AND 00/100 DOLLARS\*\*

DOLLARS

Commissioner for Trademarks

MEMO

26301

⑈001606⑈ ⑆122016066⑆ 112⑈509402⑈

  
AUTHORIZED SIGNATURE

MP

ISAACMAN, KAUFMAN & PAINTER

1606

26301 Commissioner for Trademarks

07/18/06

1606

G/L

CLIENT

DATE

INV NO.

DESCRIPTION

AMOUNT

12900000 22340-008 07/17/06 Ck Req #3780 Fee re Petition for cancellation

900.00

900.00

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: July 31, 2006

Bud K Worldwide, Inc.  
P.O. Box 565  
Moultrie, GA 31776

**Cancellation No. 92046101**  
Reg. No. 2908062

MICHAEL A. PAINTER  
ISAACMAN, KAUFMAN & PAINTER, P.C.  
8484 WILSHIRE BLVD STE 850  
BEVERLY HILLS, CA 90211-3222

DESTROYERS, INC.

V.

Bud K Worldwide, Inc.

**Tamika Whitsey, Legal Assistant:**

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

**ANSWER IS DUE FORTY DAYS** after the mailing date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at [www.uspto.gov/web/offices/dcom/ttab/](http://www.uspto.gov/web/offices/dcom/ttab/).

**The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.**

**Discovery and testimony periods are set as follows:**

Discovery period to open:	August 20, 2006
Discovery period to close:	February 16, 2007
30-day testimony period for party in position of plaintiff to close:	May 17, 2007
30-day testimony period for party in position of defendant to close:	July 16, 2007
15-day rebuttal testimony period for plaintiff to close:	August 30, 2007

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NOTE:** The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

**New Developments at the Trademark Trial and Appeal Board**

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: October 10, 2006

Cancellation No. 92046101

DESTROYERS, INC.

v.

BUD K WORLDWIDE, INC.

**Veronica White, Paralegal Specialist:**

Answer was due in this case on September 9, 2006.  
Inasmuch as it appears that no answer has been filed, nor  
has respondent filed a motion to extend its time to answer,  
notice of default is hereby entered against respondent under  
Fed. R. Civ. P. 55(a).

Respondent is allowed until thirty days from the  
mailing date of this order to show cause why judgment by  
default should not be entered against respondent in  
accordance with Fed. R. Civ. P. 55(b).

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2908062  
For the Mark BAD TO THE BONE  
Filed on December 8, 2003

DESTROYERS, INC.

Petitioner,

v.

BUD K WORLDWIDE, INC.

Registrant.

Cancellation No. 92046101

**DECLARATION SUPPORTING RESPONSE TO NOTICE OF DEFAULT**

**DECLARATION OF RODNEY HUNTER**

I, Rodney Hunter, hereby depose and state the following:

1. I am the Chief Financial Officer for Bud K Worldwide, Inc.
2. I am responsible for managing Bud K's trademark matters.
3. Bud K did not file an answer because it was unaware of the existence of the above-referenced cancellation proceeding.
4. Bud K first learned about the existence of the above-referenced cancellation proceeding on October 26, 2006. On this date, Bud K received a copy of the October 10, 2006 Notice of Default that had been re-routed by the United States Post Office from an invalid P.O. Box address. Bud K had not received any prior communications concerning this cancellation proceeding, including the Petition to Cancel or July 31, 2006 notification letter.

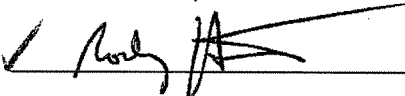
5. Upon learning of the above-referenced cancellation proceeding on October 26, 2006, Bud K immediately notified its outside counsel, Jones Day, and requested assistance responding to the Notice of Default.

6. Upon review of the TTAB's July 31, 2006 Notice of Discovery and Trial Dates, available on [www.uspto.gov](http://www.uspto.gov), Bud K noticed that the following address was listed for Registrant: Bud K Worldwide, Inc., P.O. Box 565, Moultrie, GA 31776. This is not a valid mailing address.

7. The correct addresses for Bud K's principal place of business are 475 U.S. Highway 319 South, Moultrie, GA 31768 or, as specified on its website and in its catalogs, Bud K Worldwide, Inc., P.O. Box 2768, Moultrie, GA 31776.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

**Bud K Worldwide, Inc.**

By:  \_\_\_\_\_

Rodney Hunter, Chief Financial Officer

Date: 11/7/06

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2908062  
For the Mark BAD TO THE BONE  
Filed on December 8, 2003

DESTROYERS, INC.

Petitioner,

v.

BUD K WORLDWIDE, INC.

Registrant.

Cancellation No. 92046101

**ANSWER TO PETITION FOR CANCELLATION**

Registrant Bud K Worldwide, Inc. ("Bud K"), by and through its counsel, and for its Answer, states as follows:

As to the introductory paragraph, Bud K admits that its application for Registration No. 2,908,062 was filed on December 8, 2003 for the mark BAD TO THE BONE in International Class 8 for folding knives; International Class 25 for tee shirts; and International Class 26 for belt buckles. By way of an Examiner's Amendment dated June 25, 2004, the goods description for International Class 26 was amended to read "belt buckles not of precious metal." Bud K admits that the Certificate of Registration claims first use of commerce in October, 2001. Except as so admitted, Bud K denies the remaining allegations of the introductory paragraph of the Petition for Cancellation.

Except as so admitted, Bud K denies the remaining allegations of the introductory paragraph of the Petition for Cancellation.

1. Registrant lacks sufficient information to admit or deny the allegations of Paragraph 1 of the Petition for Cancellation, and therefore denies the same.

2. Registrant lacks sufficient information to admit or deny the allegations of Paragraph 2 of the Petition for Cancellation, and therefore denies the same.

3. Registrant lacks sufficient information to admit or deny the allegations of Paragraph 3 of the Petition for Cancellation, and therefore denies the same.

4. Registrant lacks sufficient information to admit or deny the allegations of Paragraph 4 of the Petition for Cancellation, and therefore denies the same.

5. Registrant lacks sufficient information to admit or deny the allegations of Paragraph 5 of the Petition for Cancellation, and therefore denies the same.

6. Registrant denies the allegations of Paragraph 6 of the Petition for Cancellation.

7. Registrant lacks sufficient information to admit or deny the allegations of Paragraph 7 of the Petition for Cancellation with respect to Petitioner's alleged use of the mark, and therefore denies the same. Registrant denies the remaining allegations of Paragraph 7 of the Petition for Cancellation.

#### **FIRST AFFIRMATIVE DEFENSE**

Petitioner fails to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Petitioner's Petition for Cancellation is precluded by the doctrine of laches.

#### **THIRD AFFIRMATIVE DEFENSE**

Petitioner's Petition for Cancellation is precluded by the doctrines of estoppel and waiver.



**FOURTH AFFIRMATIVE DEFENSE**

Petitioner's Petition for Cancellation is precluded by the doctrine of acquiescence.

**FIFTH AFFIRMATIVE DEFENSE**

Some or all of Petitioner's claims are barred because Petitioner's mark is not a famous mark and was not a famous mark prior to Registrant's use.

**SIXTH AFFIRMATIVE DEFENSE**

Some or all of Petitioner's claims are barred by the doctrine of fair use.

WHEREFORE, Registrant respectfully requests that the Petition for Cancellation be denied and that this proceeding be dismissed with prejudice.

Dated this 9th day of November, 2006

By: 

William B.B. Smith  
Carrie L. Kiedrowski  
Jones Day  
1420 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3053  
Telephone: (404) 521-3939  
Facsimile: (404) 581-8330  
wsmith@jonesday.com,  
clkiedrowski@jonesday.com

Attorneys for Registrant  
Bud K Worldwide, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document entitled **Answer to Petition for Cancellation** has been served on Petitioner:

Michael A. Painter  
Isaacman, Kaufman & Painter, P.C.  
8484 Wilshire Blvd., Suite 850  
Beverly Hills, California 90211-3222

by mailing the same via United States mail, postage prepaid, on this 9<sup>th</sup> day of November, 2006.



Attorney for Registrant